SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 407

ALLEN S. KRAKOVER, Trustee,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above case on May 2, 1967.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the referee in bankruptcy (R. 18) is unreported and is printed in Appendix C hereto. The order on petition for review of the District Court (R. 25) is unreported and is printed in Appendix B hereto. The opinion of the Court of Appeals, printed in Appendix A hereto, is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 2, 1967. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether it is a violation of sovereign immunity for the referee in bankruptcy to order the Denver Mint, employer of the Chapter 13 debtor, to pay to the trustee $30 semi-monthly out of the debtor's pay.

2. Whether any such immunity has been waived by Congress.

STATUTE INVOLVED

The statute involved is Section 658 of the Bankruptcy Act, 11 U.S.C. 1058:

"During the period of extension, the court—

> "(2) may issue such orders as may be requisite to effectuate the provisions of the plan, including orders directed to any employer of the debtor. An order directed to such employer may be enforced in the manner provided for the enforcement of judgments."

STATEMENT

The jurisdiction of the district court was invoked because the case arises under the Bankruptcy Act.

On March 18, 1965, Lawrence Anderson, then an employee of the State of Colorado, filed a petition for a wage earner's plan under Chapter 13 of the Bankruptcy Act. The plan provided for the payment of $60 per month from Anderson's future earnings to the trustee, who would use this money to pay Anderson's debts. Petitioner Krakover was appointed to serve as trustee (R. 3).

Thereafter, Anderson became an employee of the Denver Mint, an agency of the United States Treasury Depart-

ment. On August 11, 1965, on motion of the trustee, the Referee issued an order requiring the Denver Mint to pay to the trustee $30 semi-monthly out of Anderson's future earnings. The authority for issuance of this order was Section 658(2) of the Bankruptcy Act which provides that the court may "issue such orders as may be requisite to effectuate the provision of the plan, including orders directed to any employer of the debtor." (R. 3-4)

The United States moved to vacate this order on sovereign immunity grounds (R. 5). On December 29, 1965, the Referee denied this motion holding that the order "does not affect the property of the United States," that consent to such an order could be inferred from the provisions of Chapter 13, and that the order did not violate the rule that the United States as an employer is not subject to garnishment (R. 18-21).

The United States filed a petition for review by the District Court (R. 22). On March 31, 1966, the District Court upheld the Referee's order (R. 25). The United States appealed (R. 30), and the Tenth Circuit reversed, holding that the words "any employer" in Section 658 did not include the United States and that sovereign immunity was violated.

REASONS FOR GRANTING THE WRIT

1. The Tenth Circuit has decided an important question of federal bankruptcy which has not been, but should be, settled by this Court. No Court of Appeals has previously decided the question. There is no reported decision of any District Court on the question.

Clearly, the question presented is of importance in the administration of federal bankruptcy laws. Congress at the time of enacting Chapter 13 noted that a large percentage of bankrupts were wage earners. Many of them felt a moral obligation to pay off their debts, but simply did not have the money to do it. The only source the wage earner had was

out of future earnings, yet creditors were not willing to wait for payment. The stated purpose of Chapter 13 was to provide a means by which the wage earner could avoid "the stigma of bankruptcy." See Chandler Report, H.R. Rep. No. 1409, 75th Cong., 1st Sess., pp. 52-55. The wage earners had mismanaged their own finances, and Chapter 13 corrected this by providing for a new manager of finances in the form of a trustee. The chance of success of the wage earner plan was enhanced by the power given by the Referee to direct employers to pay portions of the wages directly to the trustee. Without this power, the plan will often fail. Many of the millions of employees of the United States need the beneficent provisions of Chapter 13 to avoid the stigma of bankruptcy. (See reference to federal employees in report of Solicitor General to President Hoover, dated December 5, 1931, Sen. Doc. No. 65, 72nd Cong., 1st Sess., pp. 201-202). Whether Section 658 applies to the United States is an important question.

2. The decision of the Tenth Circuit is wrong. The intent of Congress was to include the United States when it said in Section 658 that the court may issue "orders directed to *any employer* of the debtor." It is not always necessary to mention specifically "the United States" in order that it be included in a statute. Thus, this Court held in *Baltimore National Bank v. State Tax Commission*, 297 U.S. 209, that the word "all" in a statute included the RFC, an agency of the United States, even though the United States was not specifically mentioned, page 212:

> "In such a situation the burden is heavily on the suitor who would subject the word 'all' with its uncompromising generality to an unexpressed exception. * * *"

See also *United States vs. California*, 297 U.S. 175.

If sovereign immunity is involved, then Congress waived immunity in Section 658. The Court below was wrong in automatically excluding the United States from the section applying to "any employer."

Moreover, if there is no waiver, the Court was wrong in deciding that the order was a suit against the United States violating immunity. It has been held that an involuntary assignment of government wages to a trustee in bankruptcy does not violate sovereign immunity. *Kolb v. Berlin*, 5 Cir., 356 F.2d 269. And this Court has upheld an involuntary assignment of a tax refund under the Bankruptcy Act, *Segal v. Rochelle*, 382 U.S. 375. Surely then a voluntary assignment does not violate sovereign immunity.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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